

DECLARATORY

Improvement Res. No. 1058-1961

For the Condemnation of a permanent right of way for sewer easement and utility purposes and a temporary right of way for construction purposes across parts of Lot 6 in Wells Reserve situated in the Northeast  $\frac{1}{4}$  Section 2, Township 30 North, Range 12 East, all in Allen County, Indiana.

Resolution Adopted:

June 5, 1961

Confirmed:

June 26, 1961

Bids Received:

Contract Awarded:

Contract and Bond:

Contractor:

Reported Completed:

Assessment Roll Confirmed:

August 15, 1961

B.O. 84-161

*Eloy, Brown, Hall*  
Third St. Pumping Station ~~Survey~~

DECLARATORY RESOLUTION NO. 1058-1961

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PLANS ORDERED:

ADOPTED: June 5, 1961

ADVERTISE NOTICE TO PROPERTY OWNERS: June 7 & 14, 1961

Notices mailed June 13, 1961

HEARING ON CONFIRMATION: Monday, June 26, 1961, at 10:00 a. m.

CONFIRMED: June 26, 1961

ASSESSMENT ROLL ORDERED: June 26, 1961

ASSESSMENT ROLL APPROVED: July 19, 1961

HEARING ON CONFIRMATION

OF ASSESSMENT ROLL: Tues., August 15, 1961, 10 a. m.

Notice to Non-Residents Adv. July 21, 28 & Aug. 4, 1961

NOTICE SERVED: Mailed: July 21, 1961

ASSESSMENT ROLL CONFIRMED: August 15, 1961

Munc Pro June Entry July 7, 1961  
43-136-16

Munc Pro June Entry July 25, 1961  
43-177-11

DECLARATORY RESOLUTION No. 1058 1961

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Lot 6 in Wells Reserve situated in the Northeast  $\frac{1}{4}$  Section 2, Township 30 North, Range 12 East, all in Allen County, Indiana.

Resolved by the Board of Public Works of the City of Fort Wayne, Indiana, that it is desired and deemed necessary to condemn a permanent right of way for sewer and utility purposes across the following described real estate in Allen County, Indiana:

Beginning at a point on the East line of North Calhoun Street, 81 feet south of the South line of 4th Street; thence due South along the East line of North Calhoun Street a distance of 186.4 feet to a point; thence South 19 degrees 46 Minutes West 102 feet to a point; thence South 57 degrees 00 Minutes East 82 feet to a point; thence South 33 degrees 00 Minutes West 81 feet to a point; thence South 57 degrees 00 Minutes East 92 feet to the low water line of the St. Marys River; thence North 26 degrees 42 Minutes East 75.5 feet to a point at the low water line of the St. Marys River; thence North 35 degrees 22 Minutes 30 Seconds East 59 feet to a point at the low water line of the St. Marys River; thence North 57 degrees 00 Minutes West 87 feet to a point; thence South 33 degrees 00 Minutes West 19 feet to a point; thence North 57 degrees 00 Minutes West 62 feet to a point; said point being 13 feet East of the East line of North Calhoun Street Extended and 352 feet South of the South line of 4th Street; thence due North and parallel with the East line of North Calhoun Street Extended a distance of 271 feet to a point; thence due West a distance of 13 feet to the point of beginning.

and to condemn a temporary right of way for the construction of the sewer and appurtenances in said permanent right of way across the following described real estate:

Beginning at a point 81 feet south of the South line of 4th Street and 13 feet East of the East line of North Calhoun Street Extended; thence South and parallel with the East line of North Calhoun Street Extended a distance of 271 feet to a point; thence Southeasterly a distance of 12 feet to a point; thence North and parallel with the said East line a distance of 278 feet to a point; thence West a distance of 10 feet to the point of beginning.

except for that part thereof condemned for a permanent easement as above set forth.

Which temporary right of way shall expire within two (2) years from the date of the adoption of this Resolution.

All as shown by a plan of such proposed Condemnation of right of way for utility purposes as above described, now on file in the Office of the Department of Public Works of the City of Fort Wayne, Indiana.

The cost of said Condemnation of right of way for sewer easement and utility purposes and temporary right of way for construction purposes shall be assessed against the property beneficially affected thereby.

The property which may be injuriously or beneficially affected by such Condemnation or right of way for sewer easement and utility purposes and temporary right of way for construction purposes is described as follows: Lot 6 in Wells Reserve situated in the Northeast  $\frac{1}{4}$ , Section 2, Township 30 North, Range 12 East, all in Allen County, Indiana.

All according to the method and manner provided for in an Act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," as approved March 6, 1905 and the provisions of all acts amendatory thereto and supplemental thereof, including the right to bond assessments as in said law ordered.

Assessments if deferred are to be paid in ten equal installments with interest at the rate of five percent (5%) per annum. Under no circumstances shall the City of Fort Wayne, Indiana be or be held responsible for any sum or sums due from the said property owner or owners, or for the payment of any bond or bonds, except for such moneys as shall have been actually received by the City from the assessments for such property damages as said City is by said above entitled act required to pay. All Proceedings had in the making of said improvement, assessment of property, collection of assessments and issuance of bonds therefor, shall be as provided for in said above entitled act and all amendments thereto and supplements thereof.

All streets, lots and lands affected by the above described Condemnation are situated in the Northeast  $\frac{1}{4}$ , Section 2, Township 30 North, Range 12 East, and lying wholly within the corporate limits of the City of Fort Wayne, Indiana.

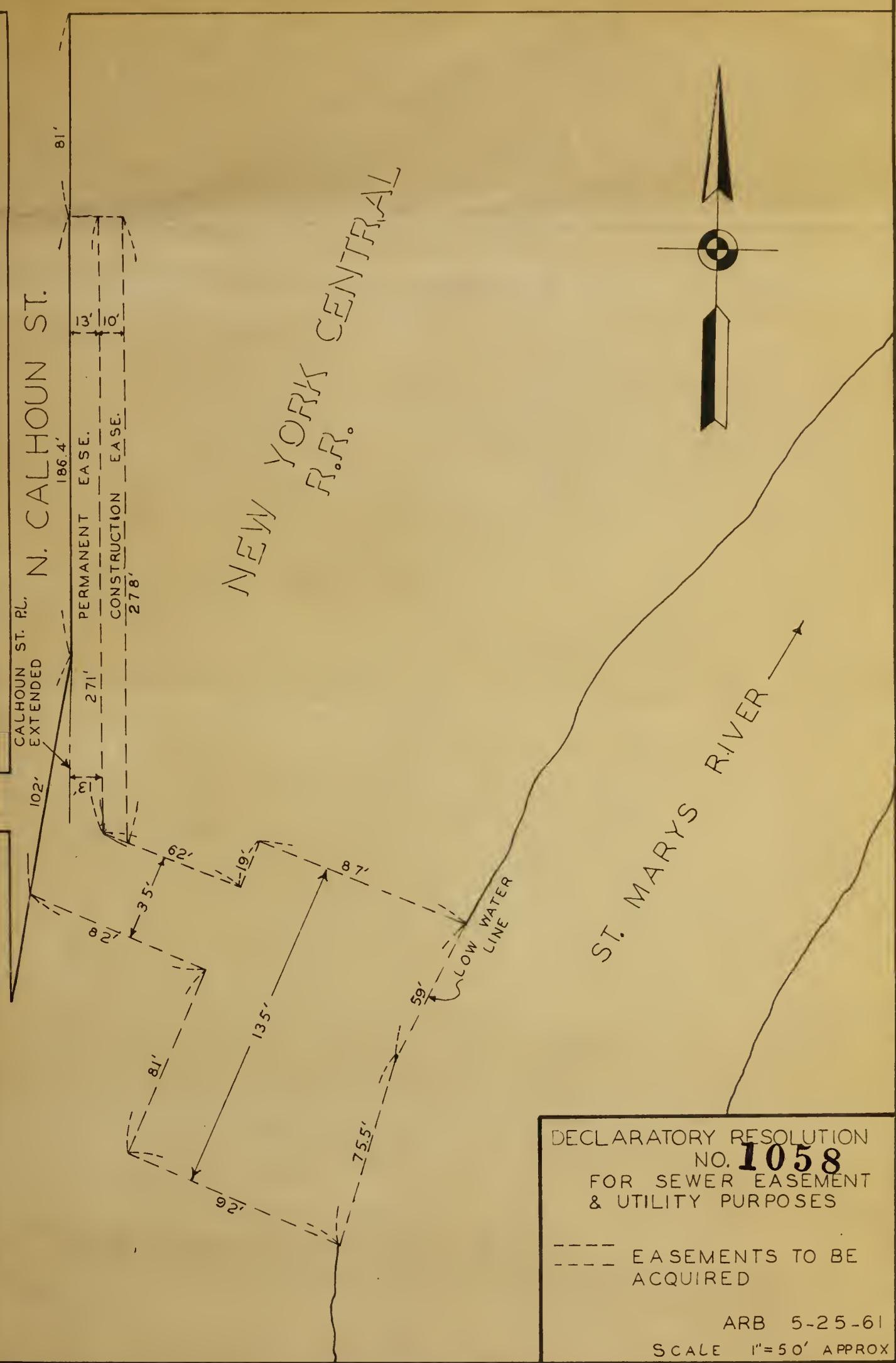
ADOPTED THIS 5 DAY OF June 1961

Paul E. Remke  
John Lombard  
Berkeley Ward  
BOARD OF PUBLIC WORKS

ATTEST:

CLERK

## FOURTH ST.



7-25-61  
43-177-11

FORT WAYNE, INDIANA, JULY 25, 1961

RESOLUTION 1058-1961

NUNC PRO TUNC ENTRY BY BOARD OF PUBLIC WORKS  
CORRECTING OMISSION IN RESOLUTION

Comes now Patrick Sidney-Smith, Chief Sewer Engineer, and shows to the Board that it was never intended that any obstruction or improvement would be erected above the ground surface within the condemnation easement closer than 18 feet southerly from the most southerly track operated by the New York Central Railroad Company, and that Resolution of Condemnation No. 1058-1961, adopted on June 8, 1961 and confirmed on June 26, 1961, should be amended to correct the said omission.

NOW THEREFORE BE IT RESOLVED that Resolution No. 1058-1961 be amended NUNC PRO TUNC to provide that no improvements or structures shall be erected upon the condemned easement above the ground surface closer than 18 feet from the most southerly track operated by the New York Central Railroad Company as now exists.

FORT WAYNE, INDIANA, July 7, 1961

RESOLUTION NO. 1058-1961

NUNC PRO TUNC ENTRY BY BOARD OF PUBLIC WORKS  
CORRECTING DESCRIPTION IN RESOLUTION

Comes now Patrick Sidney-Smith, Chief Sewer Engineer, and shows to the Board that through a scrivener's error a mistake was made in the tenth and thirteenth lines of the description of the permanent right of way to be condemned in the above Resolution, which was adopted by this Board of June 5, 1961 and confirmed June 26, 1961. That the tenth line of the permanent right of way should read

"thence North 35 degrees 22 minutes East 59 feet to a point"

instead of

"thence North 35 degrees 22 minutes 30 seconds East 59 feet  
to a point"

and the thirteenth line of the permanent right of way should read

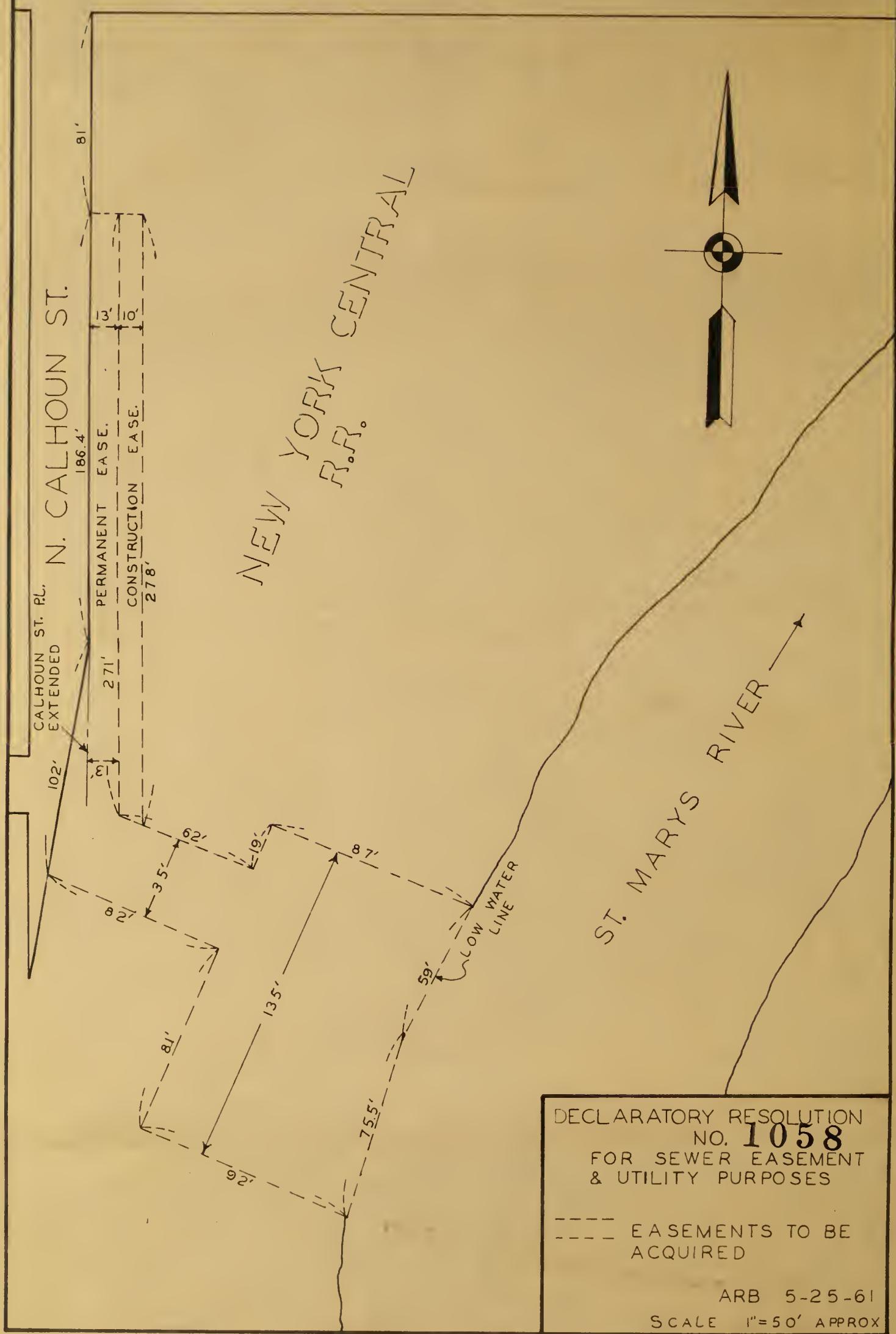
"West 19 feet to a point; thence North 57 degrees 00 minutes  
West 47.60"

instead of

"West 19 feet to a point; thence North 57 degrees 00 minutes  
West 62"

And the Board being duly advised finds that said description should be corrected accordingly, and the Board now corrects and amends by interlineation the tenth and thirteenth lines of the description for the permanent right of way nunc pro tunc as of the date of the adoption of said Resolution on June 5, 1961, and the confirmation on June 26, 1961, accordingly.

FOURTH ST.





1745  
425  
100

2270\*

<b>Nº 27401</b>		<b>OFFICE OF CLERK OF ALLEN CIRCUIT COURT</b>	<b>Cause No. 28263</b>
Court Cost .....	\$	3 00	
Docket Fees .....			Fort Wayne, Ind., 10 - 9 1962
Jury Fees .....			
Fines and Forfeitures .....			
Sheriff's Fees .....		4 45	
Prosecutor's Fees .....			
City Court .....			
Fort Wayne Newspapers, Inc. ....			
Witness Fees .....			
Trust Funds .....			
<i>Crumpecker</i>		10 00	
Total <i>Hammond Ind</i>	\$	17 45	
			Court C { Fee Book 34 Page 137
			Jd. Dkt. Page
			<i>D. Y. Central RR</i>
			<i>vs.</i>
			<i>City of F. W. et al</i>
			Received by <i>Elmer Smith</i>
			Debt
			CLERK ALLEN CIRCUIT COURT

Nº 27400 OFFICE OF CLERK OF ALLEN CIRCUIT COURT		Cause No. 28366
Court Cost .....	\$ 3 00	Fort Wayne, Ind., 10 - 9 1942
Docket Fees .....		Court 1 Fee Book 34 Page 164
Jury Fees .....		Jd. Dkt. Page
Fines and Forfeitures .....		
Sheriff's Fees .....	1 25	Ft Wayne & Jackson R.R.
Prosecutor's Fees .....		vs.
City Court .....		City of Fort Wayne
Fort Wayne Newspapers, Inc.		Received of
Witness Fees .....		
Trust Funds .....		
Total .....	\$ 4 25	City - Elmer Smith CLERK ALLEN CIRCUIT COURT

CERTIFIED COPY RECEIPT

A 11785

Office of Clerk of Allen Circuit Court

\$ 1.00

Fort Wayne, Ind.

9-13 1962

Received of Robert L. Hines

One and 00/100 -

100 Dollars

for Certified Copies of Order # 28263 -

NYC vs City of Ft. Wayne Identification No. 14491

Elmer Smith

Clerk Allen Circuit Court

STATE OF INDIANA      }  
COUNTY OF ALLEN      }ss:

1961 AUG 31 AM 8:45

IN THE ALLEN CIRCUIT COURT

FORT WAYNE, INDIANA

NEW YORK CENTRAL RAILROAD COMPANY,  
a Corporation, and FORT WAYNE AND  
JACKSON RAILROAD COMPANY, a  
Corporation,

Plaintiffs

-vs-

THE CITY OF FORT WAYNE, INDIANA,  
a Municipal Corporation, and  
PAUL F. ROEMKE, JOHN D. LOMBARD,  
and BERKELEY WARD, as members of  
and constituting the Board of Public  
Works of the City of Fort Wayne,  
Indiana,

Defendants

CAUSE NO. 28263  
CUST. REC'D.  
RECORDED  
IN FEE'S DEPT.  
ALLEN COUNTY, IND.

AUG 31 1961  
4:35 PM '61

COMPLAINT OF APPEAL

Come now the plaintiffs and for cause of action against the defendants allege and say:

(1) Defendant City of Fort Wayne is a municipal corporation existing pursuant to the laws of the State of Indiana. The individually named defendants are members of and constitute the Board of Public Works of the said defendant City of Fort Wayne.

(2) That on or about June 5, 1961, the said Board of Public Works of the City of Fort Wayne adopted its Declaratory Resolution No. 1058-1961 for the purpose of condemning a permanent right-of-way for sewer and utility purposes across certain parcel of real estate described therein and for the purpose of condemning a temporary right-of-way for construction purposes across a certain parcel of real estate described therein, a copy of which Declaratory Resolution is attached hereto and made a part hereof as Exhibit "A".

(3) That the plaintiff Fort Wayne & Jackson Railroad Company is the fee owner of a certain parcel of real estate, to-wit: Lot 6, in Wells Reserve situated in the Northeast 1/4 of Section 2, Township 30 North, Range 12 east, in Allen County, Indiana, which said property is injuriously affected by the aforesaid condemnation proceedings.

The plaintiff New York Central Railroad Company is the owner and holder of a leasehold interest in the aforescribed real estate, and is the owner and holder of railroad easements and operating rights which are injuriously affected by the aforescribed condemnation proceedings.

(4) Plaintiffs remonstrated against the aforescribed condemnation proceedings, and on June 26, 1961, said Board of Public Works overruled the said remonstrance and adopted a confirmatory resolution, confirming the aforescribed condemnation.

(5) On or about the 19th day of July, 1961, the said Board of Public Works approved an award of benefits and damages in the aforescribed condemnation proceedings, which said award of benefits and damages was set for public hearing on August 15, 1961. Plaintiffs were awarded by the said award of benefits and damages, as damages to their property and property rights as a result of the aforescribed condemnation proceedings the sum of Three Thousand (\$3,000.00) Dollars. Plaintiffs remonstrated against the amount of said award and on August 15, 1961, said Board of Public Works overruled the said remonstrances and confirmed the award of Three Thousand (\$3,000.00) Dollars to the plaintiffs herein as damages, by reason of the aforescribed condemnation proceedings.

(6) On August 23, 1961, the defendants did enter upon the land of the plaintiffs described herein for the purpose of constructing the sewer described in the said Declaratory Resolution 1058. On August 24, 1961, the defendants did tender to the agent of the plaintiff New York Central Railroad Company a check in the amount of Three Thousand (\$3,000.00) Dollars, which said tender was refused.

(7) That the amount of the award of damages to the plaintiffs herein is inadequate.

(8) That by virtue of the aforescribed condemnation proceedings, the plaintiffs have been damaged in the amount in excess of Ten Thousand (\$10,000.00) Dollars.

(9) That the action of the said Board of Public Works in adopting the aforescribed award of benefits and damages is illegal, null, and void for each of the following reasons:

(a) Proper notice was not given in the manner or form prescribed by law.

(b) Said award was not made in the manner or form prescribed by law.

(10) By virtue of the foregoing facts, the plaintiffs are being deprived of their property without due process of law.

WHEREFORE, the plaintiffs pray an appeal from the said award of assessment and damages and that upon trial and hearing de novo the court determine the amount of damages to the plaintiffs' property and property rights, and for all other just and proper relief in the premises.

Charles W. Kimball  
George D. Barker  
Attorneys for the Plaintiffs

DECLARATORY RESOLUTION NO. 1058 1961

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All streets, lots and lands affected by the above described Condemnation are situated in the Northeast  $\frac{1}{4}$ , Section 2, Township 30 North, Range 12 East, and lying wholly within the corporate limits of the City of Fort Wayne, Indiana.

ADOPTED THIS 5th day of June, 1961.

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BOARD OF PUBLIC WORKS

ATTEST:

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Clerk

DECLARATORY RESOLUTION NO. 1058 1961

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All streets, lots and lands affected by the above described Condemnation are situated in the Northeast 1/4, Section 2, Township 30 North, Range 12 East, and lying wholly within the corporate limits of the City of Fort Wayne, Indiana.

ADOPTED THIS 5th day of June, 1961.

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BOARD OF PUBLIC WORKS

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ATTEST:

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Clerk

STATE OF INDIANA, } ss.  
COUNTY OF ~~Kosciusko~~ ALLEN

ALLEN

XXX

To The Sheriff of Lake County, Greetings:

You are hereby commanded to summon..... THE BOARD OF PUBLIC WORKS OF FORT WAYNE  
 ..... SERVICE ON: KENNETH McGRAW, Clerk  
 ..... City Hall  
 ..... Fort Wayne, Indiana

NOV 21  
4:30 PM  
1911

CUSTEFER JUNIOR  
SHERIFFING  
RECEIVED  
SHERIFF OF LAKE COUNTY  
IND

to appear or enter..... its appearance either in person or by attorney in the ~~Lake~~ Circuit Court, before the Judge  
 thereof, at the Court House in ~~LAKE~~ Indiana, on the ~~12th~~ day of ~~Sept~~ 19<sup>th</sup>, being the.....  
 Judicial day of the..... term, 19....., of said court, to answer the complaint of.... The New York Central  
Railroad Company and the Fort Wayne & Jackson Railroad Company

..... and in case of failure to do so the matter will be (decided) heard in ..... its absence.  
 And of this writ make due return.

WITNESS, ..... Clerk of said court,  
 and the seal thereof affixed at Crown Town, this ..... day,  
 of ..... August, 19.....  
Elmer Smith, Clerk  
 By ..... Deputy

No. 28263

allen  
IN THE LAKE CIRCUIT COURT  
CROWN POINT, INDIANA  
Fort Wayne

Term, 19

New York Central Railroad Co.

and Ft. Wayne & Jackson R. R.

vs.

City of Fort Wayne, et al.

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## SUMMONS

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Returnable on the 12 day

of 9, 1961

Owen W. Crumpacker  
George V. Burbach  
Attorneys at Law  
5217 Hohman Avenue  
Hammond, Indiana

Plaintiff's Attorney

NEW YORK CENTRAL SYSTEM

# NEW YORK CENTRAL SYSTEM

W. Alfred Green

January 2, 1962

(a) We should like to propose that you consider allowing us to place 15 feet of our tracks.

We have also suggested to you the possibility of relocating our main line and installing new 3.5 mile long double track bridge which would reduce the maximum height of bridge. If you would like item (a) to be done would accept a proposal.

It would be glad to have you call from you to you when we can discuss this subject.

Yours very truly,

*C. C. Dwyer*  
Chief Engineer

Mr. C. C. Dwyer  
Mr. H. G. Olmst  
Mr. P. L. O'roch  
Mr. R. Z. Leger  
Mr. L. M. Gifford  
Mr. L. J. Thompson

September 27, 1962

Mr. G. P. Scheele  
General Auditor  
City Utilities  
Fort Wayne, Indiana

Dear Paul:

Subject: Court Charges  
Cause No. 28263

Pursuant with litigation of the New York Central Railroad Company, and Fort Wayne and Jackson Railroad Company versus The City of Fort Wayne, the Court cost has been determined as \$22.70. You may issue check in that amount payable to Elmer Smith, Clerk of the Court.

The foregoing is in connection with the condemnation of easement for the Third Street Pumping Station.

Very truly yours,

, Clerk

BOARD OF PUBLIC WORKS

KM:ms

cc: Mayor Burns

Sho. a 22.70 G.  
4/10/62

# City of Fort Wayne

Indiana



ROBERT L. HINES  
ASSOCIATE CITY ATTORNEY  
324 UTILITY BUILDING

PAUL M. BURNS, MAYOR

September 25, 1962

Board of Public Works  
City Hall  
Fort Wayne, Indiana

Attention: Kenneth McGraw, Clerk

Dear Ken:

Enclosed is a certified copy of the Courts order in regards to the settlement of the Fort Wayne and Jackson and New York Central Railroad Company case against the City of Fort Wayne.

I have received the \$3500.00 checks and have delivered them to the Railroad and the Railroad has acknowledged payment of their judgment in full. This disposes of Cause No. 28263 filed by the Railroad. In addition thereto and as a part of the settlement the Railroad agreed to dismiss their action against the City on the Main Street - Growth Avenue improvement and this has been now dismissed.

In order to complete the matter the City owes Court costs on these matters in the amount of \$22.70. Would you be kind enough to mail me a check payable to Elmer Smith, Clerk for this amount.

Very truly yours,

ROBERT L. HINES  
Associate City Attorney

RLH:kmc

PLEAS before the Hon. William L. Burger-Special, Judge of the Circuit Court of Allen County, State of Indiana, at a regular term of said Court, held at the Court House in the City of Fort Wayne, County of Allen, State of Indiana, commencing on Monday, the.....day of.....  
A. D., 19....., to wit:

New York Central Railroad Company,

Fort Wayne and Jackson Railroad Company

vs 28263

The City of Fort Wayne, Indiana

BE IT REMEMBERED, that on the.....4th day of .....September .....A. D., 19....., 62  
the same being the.....2nd .....September .....Judicial day of the.....September

Term, 19....., of said Court, held at the said Court House, before the Honorable Judge aforesaid, the following order was made.....

in the above entitled cause by said Court to wit:

Comes now the Honorable William L. Burger, Special Judge herein.

Come now the parties herein, by counsel, and this cause now being at issue, the same is submitted to the Court for trial, and the Court having heard the proofs and evidence, and being duly advised in the premises, now finds for the plaintiffs and that there is due said plaintiffs from the defendant, The City of Fort Wayne, Indiana, the sum of Three Thousand Five Hundred (\$3,500.00) Dollars, together with the costs of this action.

It is, therefore, ordered, adjudged and decreed by the Court that the said plaintiffs, New York Central Railroad Company, and Fort Wayne and Jackson Railroad Company, have and recover of and from the said defendant, The City of Fort Wayne, Indiana, the said sum of Three Thousand Five Hundred (\$3,500.00) Dollars, together with the costs of this action.

  
William L. Burger, Special Judge

# STATE OF INDIANA, COUNTY OF ALLEN:

I, ..... Elmer Smith ..... Clerk of the Allen Circuit Court,  
in and for said County and State, certify that the above and foregoing is a full, true and perfect copy of  
an order

entered and signed in the above entitled cause by said court, as the same appears and remains on record in  
Order Book..... 121 ..... page..... 39 ..... of said Court, in my office.

In Testimony Whereof, Witness my name and the seal of said Court  
hereto subscribed and affixed, at the City of Fort Wayne, this the  
..... 12th day of..... September..... A. D., 19..... 62

*Elmer Smith*  
Clerk Allen Circuit Court

14491  
CIRCUIT COURT

No..... 28263

New York Central Railroad Company,  
Fort Wayne and Jackson Railroad Company

The City of Fort Wayne, Indiana

CERTIFIED COPY OF

an order

# City of Fort Wayne

Indiana



ROBERT L. HINES  
ASSOCIATE CITY ATTORNEY  
324 UTILITY BUILDING

PAUL M. BURNS, MAYOR

August 28, 1962

Board of Public Works  
City Hall  
Fort Wayne, Indiana  
Atten: Kenneth McGraw

Re: New York Central R.R.  
vs  
City of Fort Wayne

Dear Ken:

The Court has now entered the order against the City for the amount of \$3,500.00 as the amount in full to the New York Central and Fort Wayne and Jackson Railroads for the right of way condemned under declaratory resolution 1058-1961. If you would please send me the \$3,000.00 check that was originally tendered and an additional check for \$500.00, I will show satisfaction of the judgment. This settlement will also include the dismissal by the railroad of the appeal involving the corner of Main Street and Knitters Ave. The City will have some court costs to pay and as soon as I know the amount I will have you issue an additional check to cover that.

Very truly yours,

ROBERT L. HINES  
ASSOCIATE CITY ATTORNEY

RLH/sh

July 30, 1962

Mr. Robert L. Hines  
Associate City Attorney  
334 Utility Building  
Fort Wayne, Indiana

Dear Sir:

Pursuant with your letter of July 5 requesting check for \$3,500 to resolve the litigations on Declaratory 1058-1961 and Declaratory 1066-1961, we submit herewith two (2) checks to cover.

It will be necessary for the Judge to determine that the damages on Declaratory 1058 shall be \$3,500 instead of \$3,000 in order that we may legally pay the additional \$500. Otherwise the Board would have to determine the increased damages by Resolution and a public hearing would have to be held.

May we have the foregoing instrument to complete our files on the subject.

Very truly yours,

*[Signature]*, Clerk

BOARD OF PUBLIC WORKS

KM:ms

enc. 2

cc: Mayor Burns

July 10, 1962

Mr. Paul Scheele, Auditor  
City Utilities  
Fort Wayne, Indiana

Dear Paul:

Re Declaratory Resolution 1058-1961  
for the Condemnation of a  
Permanent Right of Way for Sewer  
Easement and Utility Purposes in  
connection with Third Street  
Water Pumping Station

This has reference to the damages awarded the New York  
Central and Fort Wayne and Jackson Railroad Company in the  
amount of \$3,000 as per captioned Resolution.

Check was issued on your No. 12515, August 23, 1961, in  
the amount of \$3,000, which was never accepted by the Railroad  
Company and said award was appealed in the Allen Circuit Court,  
Cause No. 28263.

We now have information from the Legal Department that  
the Railroad Company agrees to accept \$3,500 and will dismiss  
their appeal.

You are hereby authorized to issue an additional check  
payable to the Fort Wayne and Jackson Railroad Company, the  
New York Central Railroad Company (lessee) in the amount of  
\$500.

Very truly yours,

*Fernard M. Grant*, Clerk  
BOARD OF PUBLIC WORKS

KM:ms

enc. 2

cc: Mayor Burns

# City of Fort Wayne

Indiana



PAUL M. BURNS, MAYOR

ROBERT L. HINES  
ASSOCIATE CITY ATTORNEY  
324 UTILITY BUILDING

July 5, 1962

Board of Public Works  
City Hall  
Fort Wayne, Indiana

Attention: Paul F. Roembke

Dear Paul:

A short time ago I asked the Board's permission to propose a settlement to the New York Central and Fort Wayne Jackson Railroad Co. for the condemnation of a right-of-way for sewer purposes and the condemnation of property at the corner of West Main and Knitter's Avenue.

The Board originally offered \$3,000.00 for the condemnation of sewer purposes. After some negotiations with the attorney for the Railroads they have agreed to accept the \$3,500.00 and will dismiss their appeal on both the sewer condemnation and Knitter's Avenue condemnation.

Will you please ask the Secretary of the Board to send a check to my office in the amount of \$3,500.00 payable to the New York Central Railroad Company and I will then see that both of these cases are dismissed.

Very truly yours,

ROBERT L. HINES  
Associate City Attorney

RLH:kmc

May 31, 1962

Mr. Robert L. Hines  
Associate City Attorney  
324 Utility Building  
Fort Wayne, Indiana

Dear Bob:

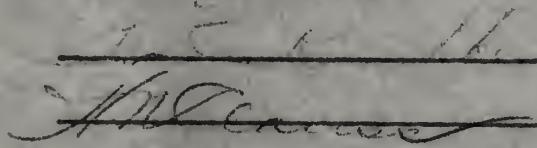
Re Fort Wayne Jackson Railroad  
Company vs. City of Fort Wayne

This has reference to the pending litigations with the Fort Wayne Jackson Railroad Company on Declaratory Resolution 1066-1961 for the condemnation of right of way for street purposes at the northeast corner of Main Street and Knitters Avenue and Declaratory Resolution No. 1058-1961 for the condemnation of a permanent right of way for sewer easement and utility purposes in connection with the Third Street Storm Water Pumping Station.

We have noted your letter with reference to a compromise and this is to inform you the Board will be willing to grant damages in the amount of \$3,500 on the assessment roll of Declaratory Resolution 1058-1961 contingent upon receipt of a letter advising that both appeals have been dismissed.

In resolving these two cases, it shall be understood that on Declaratory 1066-1961 that the assessed damages and benefits shall remain at \$1.00 and that on Declaratory 1058-1961, it will be necessary to adopt a Resolution amending the assessed damages to \$3,500 instead of \$3,000.

Very truly yours,



BOARD OF PUBLIC WORKS

KM:ms  
cc: Mayor Burns

# City of Fort Wayne

Indiana



6  
5 29  
PAUL M. BURNS, MAYOR

ROBERT L. HINES  
ASSOCIATE CITY ATTORNEY  
324 UTILITY BUILDING

May 24, 1962

Board of Public Works  
City Hall  
Fort Wayne, Indiana

Attention: Paul F. Roembke  
Chairman

In re: Fort Wayne Jackson  
Railroad Company  
Vs. City of Fort Wayne

Dear Paul:

There are two cases pending in the Allen Circuit Court, the first of which involves an appeal from a condemnation of easement right-of-way in which the Board granted damages in the amount of \$3,000.00 which the Railroad Company refuses to accept and filed the appeal, the second case involves the cutting off of the corner of ~~Broadway~~ and Knitters Avenue where the Board assessed damages and benefits at \$1.00.

The Railroad is represented by Crumpacker from Hammond, Indiana and has asked the Court to set the matters for trial. In the meantime I have had several conferences with one of the attorneys for the Plaintiff and they have indicated that they would withdraw both appeals in consideration of an additional \$500.00. In other words if we would grant them \$3,500.00 rather than \$3,000.00 they have indicated that they would accept this and dismiss both appeals.

Board of Public Works

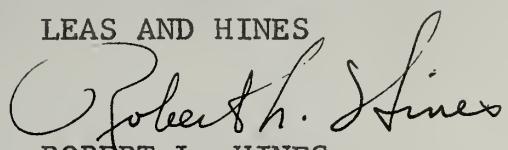
-2-

May 24, 1962

Prior to proceeding further with this case, I would appreciate an expression from the Board as to whether or not they are willing to make the compromise.

Very truly yours,

LEAS AND HINES



ROBERT L. HINES  
Associate City Attorney

# NEW YORK CENTRAL SYSTEM

C. E. DEFENDORF  
CHIEF ENGINEER  
T. P. CUNNINGHAM  
ASST. CHIEF ENGINEER  
KARL OWARDITS  
ENGINEER GRADE CROSSINGS

LA SALLE STREET STATION  
CHICAGO 5, ILLINOIS

May 24, 1962  
File N-F-37E-FW

Mr. P. F. Roembke, Chairman  
Board of Public Works  
City of Fort Wayne, Indiana

Dear Sir:

As requested in your letter of May 18, 1962, I am attaching for the City's record a fully executed copy of agreement dated May 1, 1962 between The New York Central Railroad Company and the City of Fort Wayne, Indiana, to cover the installation, repair, maintenance, use and removal of a private grade crossing over and across Railroad right-of-way and tracks at the intersection of Third and Calhoun Streets at Fort Wayne, Indiana, for an initial fee of \$50.00 and an annual rental of \$200.00 beginning June 1, 1962.

It is understood that the City will provide gates and barricade the area so that no other use will be made of the crossing except to provide access to the City's pumping station site.

Receipt is acknowledged of the City's check, Warrant No. 17010, dated 5-18-62, in amount of \$250.00, to cover the fee and first year rental included in the agreement.

We are requesting Mr. J. G. Pfaller, Division Engineer at Toledo, Ohio, to progress our portion of the crossing construction, the expense of which will be billed against the City of Fort Wayne in accordance with terms of the agreement.

Yours very truly,

*C. E. Defendorf*  
Chief Engineer

Encl.

NOTED  
 P.F.R.  
 H.N.C.  
 B.W.

Date \_\_\_\_\_

May 18, 1962

Mr. C. E. Defendorf  
Chief Engineer  
New York Central System  
La Salle Street Station  
Chicago 5, Illinois

Dear Sir:

Re Your File N-F-37E-FW

We transmit herewith Railroad Crossing Agreement in two (2) counterparts between the New York Central Railroad Company and the City of Fort Wayne, which has been executed by the members of the Board of Public Works. We also enclose herewith check in the amount of \$250.00, representing \$50.00 preparation fee and \$200.00 first annual rental fee.

Construction work on our project has progressed to the degree that it is urgent that this crossing be constructed promptly and you are hereby requested to perform such work at your earliest possible convenience.

Please return the City's duly executed copy to the Board of Public Works, City Hall, Fort Wayne, Indiana.

Very truly yours,

BOARD OF PUBLIC WORKS

*P. F. Roembke*  
P. F. Roembke, Chairman

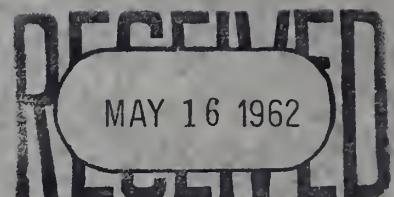
PFR:ms

enc. 4

cc: Mayor Burns

*Ed Green*

*Co. 6. Staff*



May 15, 1962

Mr. J.H. Hinman  
Chief Electrical Engineer

This has reference to your letter of May 14, 1962 concerning a temporary easement for a wire line across the New York Central tracks at the Third Street Pumping Station.

As I have advised you previously, we will not enter into any agreement for this power line easement since the Board of Public Works has condemned the easement for utility purposes over, under and across the New York Central property at this location.

You should, of course, see to it that any facilities which you install are located within the easement lines.

It will not be necessary to reply to the New York Central letter at this time.

*Edward Green*  
Edward Green  
Chief Engineer, City Utilities

EG:ld

cc: Mayor Burns  
Board of Public Works ✓

May 14, 1962

*file  
Rec 1058*

Board of Public Works  
City of Fort Wayne  
Fort Wayne, Indiana

Gentlemen:

Re Storm Water Pumping Station,  
Sanitary Relief Sewer, and  
Railroad Crossing at Calhoun  
and Third Streets

There are two problems involved with the Railroad at this site.

The first is the condemnation of the land necessary for the pumping station and entrance easement thereto. The Railroad's letter of August 11, 1961, requested \$6,820 for a non-revocable agreement for the sewer and water line crossing the railroad right of way. The Railroad also requested \$2,000 for the property for the pumping station site.

Because these charges were thought excessive, this crossing and land for the site were condemned under Resolution 1058-1961 by the Board of Works and damages to the property were determined in the amount of \$3,000. Tender of this amount was made to the Railroad which was refused, and the Railroad has appealed this condemnation. This case is now pending in No. 28263 of the Allen Circuit Court.

The second problem involved the obtaining of a grade crossing, across the Railroad tracks for entrance to the pumping station site. This involves the construction of the crossing on and over the railroad tracks and the fabrication of a crossing on top of the railroad ties, etc. A satisfactory easement for this grade crossing has now been worked out with the Railroad which calls for a preparation fee of \$50 and an annual rental of \$200. This Agreement would be terminable by either party on 30 days' notice. Both the City Engineer and our office have recommended the execution of this Grade Crossing Agreement at this time in order to facilitate the work.

The execution of this Grade Crossing Agreement will not solve the first problem which pertains to the claim of the Railroad that they are entitled to approximately \$10,000 for the sewer main crossing of their railroad line and the cost of the pumping station site as against the City's claim that it owes only \$3,000 for said property.

*John E. Hoffman M.S.*  
John E. Hoffman  
Associate City Attorney

JEH:ms

Robert Hines      Edward Green  
Jerome O'Dowd    Mayor Burns

May 14, 1962

Board of Public Works  
City of Fort Wayne  
Fort Wayne, Indiana

Gentlemen:

Re Storm Water Pumping Station,  
Sanitary Relief Sewer, and  
Railroad Crossing at Calhoun  
and Third Streets

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The execution of this Grade Crossing Agreement will not solve the first problem which pertains to the claim of the Railroad that they are entitled to approximately \$10,000 for the sewer main crossing of their railroad line and the cost of the pumping station site as against the City's claim that it owes only \$3,000 for said property.

John E. Hoffman  
Associate City Attorney

JEH:ms  
Robert Hines  
Jerome O'Dowd

Edward Green  
Mayor Burns

May 11, 1962

RESOLUTION

WHEREAS, pursuant with Declaratory Resolution 1058-1961, the Board condemned an easement across the New York Central Railroad Company tracks for utility purposes and for land for a Pumping Station site.

WHEREAS, the easement condemned does not specifically provide for a railroad grade crossing over the tracks, an Agreement, therefore, is necessary in order to proceed with the work.

NOW, THEREFORE, BE IT RESOLVED that the City of Fort Wayne enter into a thirty (30) day terminable Railroad Crossing Agreement with the New York Central Railroad Company providing for a Fifty Dollar (\$50) down payment and an annual rental payment of Two Hundred Dollars (\$200) thereafter.

MR. 44-142-10

May 10, 1962

Board of Public Works  
City Hall  
Fort Wayne, Indiana

Gentlemen:

Re Railroad Crossing Agreement  
Third and Calhoun Streets  
New York Central Railroad Company  
for Access to Storm Water Relief  
Pumping Station

I have examined and approved the proposed Agreement between New York Central and the City for the above private grade crossing.

This Agreement provides for a \$50 down payment and an annual payment of \$200 per year thereafter. (*Note of payment not shown*)

This Agreement may be terminated by either party on 30 days' notice. This crossing is essential to the construction and operation of the Pumping Station.

As you will recall, the Board previously condemned an easement across the tracks for utility purposes. The Railroad has appealed this condemnation to the courts where it is now pending. The easement condemned does not specifically provide for a railroad grade crossing nor the construction of a crossing over the tracks.

We suggest approval of this Agreement in order to expedite the questions involved and to clarify our use of the crossing at this time.

At some future time, the Board could always cancel the crossing Agreement and condemn specifically both the pipeline easement and the grade crossing if that should then be termed desirable.

With the execution of this Agreement, the pending litigation will be dropped.

Very truly yours,

*John E. Hoffman*

John E. Hoffman  
Associate City Attorney

JEH:ms

*void*

cc: Robert Hines  
Edward Green  
Mayor Burns

# City of Fort Wayne



ENGINEERING DEPARTMENT

FORT WAYNE, INDIANA

425 SOUTH CALHOUN STREET

April 26, 1962

Mr. John E. Hoffman, Jr.  
Associate City Attorney

This has reference to our conversation concerning the propriety in executing a proposed agreement covering a private grade crossing over the New York Central System tracks at Third and Calhoun Streets in connection with the construction of the Storm Water Relief Pumping Station.

In accordance with our conversation, the New York Central System has rewritten Paragraph 13 of this agreement to provide that the City will not be responsible for expenses incurred for conductors, flagmen or watchmen unless, after proper notice, the City fails to correct the conditions requiring such services.

Will you please examine this agreement, and if you consider it appropriate, please approve as to form and legality and forward it to the Board of Public Works.

The Board also would like from you an expression of your opinion as to whether or not this arrangement is in the best interests of the City of Fort Wayne.

Edward Green  
Chief Engineer, City Utilities

EG:1d  
attach.  
cc: Mayor Paul M. Burns  
Board of Public Works

approved:  
J. M. Burns

RECEIVED  
RECEIVED  
APR 27 1962

April 26, 1962

Mr. John E. Hoffman, Jr.  
Associate City Attorney

This has reference to our conversation concerning the propriety in executing a proposed agreement covering a private grade crossing over the New York Central System tracks at Third and Calhoun Streets in connection with the construction of the Storm Water Relief Pumping Station.

In accordance with our conversation, the New York Central System has rewritten Paragraph 13 of this agreement to provide that the City will not be responsible for expenses incurred for conductors, flagmen or watchmen unless, after proper notice, the City fails to correct the conditions requiring such services.

Will you please examine this agreement, and if you consider it appropriate, please approve as to form and legality and forward it to the Board of Public Works.

The Board also would like from you an expression of your opinion as to whether or not this arrangement is in the best interests of the City of Fort Wayne.

*Edward Green*  
Edward Green  
Chief Engineer, City Utilities

EG:ld  
attach.

cc: Mayor Paul M. Burns  
Board of Public Works ✓

B/W - Attached is Mr. Defendorf's letter of transmittal. Will you please arrange to prepare the check and have it sent with the agreement when executed.

E.G.

# NEW YORK CENTRAL SYSTEM

C. E. DEFENDORF  
CHIEF ENGINEER  
T. P. CUNNINGHAM  
ASST. CHIEF ENGINEER  
KARL OWARDITS  
ENGINEER GRADE CROSSINGS

LA SALLE STREET STATION  
CHICAGO 5, ILLINOIS

April 25, 1962  
File N-F-37E-FW

Mr. Edward Green  
Chief Engineer, City Utilities  
City of Fort Wayne, Indiana

Dear Mr. Green:

Reference is made to previous correspondence in connection with the City's proposed private grade crossing of railroad right-of-way and tracks at the intersection of Third and Calhoun Streets in Fort Wayne.

I have revised Article Thirteenth of the proposed agreement in accordance with your phone conversation today and am attaching two copies of Sheet No. 4 for your insertion in the agreement and subsequent handling for execution on behalf of the City.

When returning both copies of the proposed agreement, will you also please attach certified copy of resolution or ordinance authorizing the execution of the agreement, together with the City's check in amount of \$250.00 to cover the preparation fee and first year rental.

As provided in the agreement, railroad expense in connection with construction of the crossing will be billed against the City.

Yours very truly,

*C. E. Defendorf*  
Chief Engineer

Encls.

December 28, 1961

Mr. Jerome J. O'Dowd  
City Attorney  
503 Fort Wayne Bank Building  
Fort Wayne, Indiana

Dear Jerry:

Re New York Central, et al. vs.  
City of Fort Wayne  
No. 28263 Allen Circuit Court

This is in reply to your inquiry as to a status report of the above action, in response to letter from Attorney Owen W. Crumpacker of Hammond to Mayor Burns.

1. The City is in the process of constructing a pumping station for sewer relief near Third Street in the City of Fort Wayne. In connection therewith they needed a sewer line under the New York Central tracks to connect the station with the City sewer system.

2. The Board of Works undertook negotiations with the New York Central for this easement under their railroad right-of-way crossing. These negotiations could not be satisfactorily completed because of the railroad's insistence that the grant of easement be a terminable one and for other conditions contained in their proposed agreement.

3. The Board of Works thereupon adopted Declaratory Resolution 1058-1961 on June 5, 1961, which was confirmed on August 15, 1961, condemning the necessary utility easement under the New York Central railway.

4. Thereafter on August 31, 1961, the New York Central as Lessee of the right of way and Fort Wayne and Jackson Railroad Company as owner of the right of way, filed the above action

appealing the award of damages of \$3,000 in the Board of Works proceeding, alleging they had been damaged in excess of said amount. This action is now pending in Court and Associate City Attorney Robert Hines is defending the action for the City.

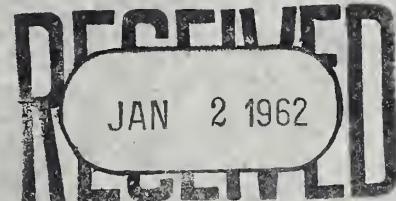
Recently the New York Central submitted proposal by their Chief Engineer under date of November 15, 1961, offering to settle the controversy if the City would pay an initial fee of \$50.00 and execute an annual rental agreement providing for an annual rental of \$200. It was the feeling of the City Engineer and the Board of Works that this Agreement was not satisfactory, that the City was not in a position to rent an easement after they had already obtained such an easement by condemnation, and that the City was better served by the condemnation of the easement.

Very truly yours,

*John E. Hoffman*  
John E. Hoffman  
Associate City Attorney

JEH:ms

cc: Mayor Burns  
Board of Public Works ✓  
Edward Green  
Robert Hines



*Mr. Hoffman sent agenda to Edward Green*

5  
12-14

December 13, 1961

Board of Public Works:

Re Proposed Rental Agreement with  
New York Central for Track Easement

Under Declaratory Resolution 1058-1961, adopted June 5, 1961, and confirmed August 15, 1961, the City condemned a utility easement under the New York Central Right of Way.

Subsequently the Railroad appealed the determination of the benefits and damages in this proceeding and this condemnation action to the Allen Circuit Court in Cause 28263, filed August 3, 1961, and this action is now pending in that court.

Since the easement has already been condemned, we do not see how the City of Fort Wayne can at this time enter into a rental agreement with the New York Central for this same easement.

We are sending a copy of this letter to Associate City Attorney, Robert Hines, who is handling the litigation in the Allen Circuit Court, for confirmation of this opinion.

As stated in our previous report to the Board on this condemnation, it was our opinion that the condemnation proceeding was regular and that the only complaint that can be established by the Railroad is the amount of benefits and damages.

*John E. Hoffman  
m.s.*  
John E. Hoffman  
Associate City Attorney

JEH:ms

Mayor Burns  
Robert Hines  
Edward Green

December 13, 1961

Board of Public Works:

Re Proposed Rental Agreement with  
New York Central for Track Easement

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John E. Hoffman  
Associate City Attorney

JEH:ms

Mayor Burns  
Robert Hines  
Edward Green

*11/30/61*  
*J.P.*  
**NOTED**

- P.F.R.
- H.N.C.
- B.W.

November 30, 1961

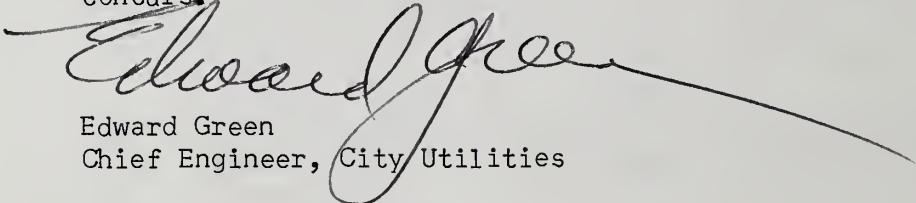
Date \_\_\_\_\_

BOARD OF PUBLIC WORKS

I am attaching a copy of a letter, together with a proposed agreement, which I received from the New York Central System which agreement provides for the proposed private grade crossing needed for the Storm Water Pumping Station near Third and Calhoun Streets.

It is my thought that this crossing is a necessary and integral part of the utility installation, and since we have condemned an easement for utility purposes across the tracks and over the lands owned by the New York Central System, it is not appropriate to execute this agreement.

I am giving Mr. Hoffman a copy of this letter and a copy of the agreement with the request that he advise us whether or not he concurs.

  
Edward Green  
Chief Engineer, City Utilities

EG:ld

attachs.

cc: Mayor Paul M. Burns  
Mr. John E. Hoffman, Jr.

# NEW YORK CENTRAL SYSTEM

LA SALLE SUBSTATION  
CHICAGO 7, ILLINOIS

November 15, 1961

File I-F-37E-FW

Dear Mr. Brown:

Reference is made to our letter of August 17, 1961 and other correspondence in connection with the proposed installation by the City of Fort Wayne of a storm water pumping station for sanitary relief system on railroad property near Third Street in the City of Fort Wayne, and particularly concerning the proposed private grade crossing of railroad right-of-way and tracks which it is understood is required to provide access to the pumping station site.

I have prepared and enclose duplicate copies of proposed private crossing agreement to cover the construction, repair, maintenance, use and removal of the proposed private grade crossing, 16-feet wide, and which you will note provides for an initial fee of \$50.00 and an annual rental of \$200.00.

You will note the agreement has not been dated, nor the effective date of rental being inserted. These can be added at the time the crossing construction work is started.

Will you please review the agreement and, if satisfactory, handle for execution on the part of the City.

Yours very truly,

*C. S. Underhill*  
Chief Engineer

September 15, 1961

Crumpacker, Gemberling & Enslen  
5217 Hohman Avenue  
Hammond, Indiana

Attention Mr. George Burbach

Gentlemen:

Re Storm Water Pumping Station  
Near Third Street  
City of Fort Wayne

Transmitted herewith are copies of the items requested  
in your letter of August 30, 1961:

Declaratory Resolution No. 1058-1961 - Approved and  
adopted  
Minute Record  
43-71-7 dated  
June 5, 1961

Confirmation of Declaratory Res. 1058-1961 - Minute  
Record  
43-119-11  
June 26, 1961

Nunc Pro Tunc Entry - Res. No. 1058-1961 - Minute Record  
43-136-16  
July 5, 1961

Assessment Roll Approved and Notice to  
non residents ordered advertised -  
Hearing on Confirmation of Assessment  
Roll set for August 15, 1961 - - - - Minute Record  
43-166-9  
July 19, 1961

- 2 -

Nunc Pro Tune Entry - Res. 1058-1961 - Minute Record  
43-177-11  
July 25, 1961

Confirmation of Assessment Roll - Minute Record  
43-209-12  
August 15, 1961

Copy of Assessment Roll dated August 15, 1961.

Very truly yours,

, Clerk

BOARD OF PUBLIC WORKS

KM:ms

enc. 8

cc: Mayor Burns  
Ed Green

Mr. Green:

Enclosed is copy of Mr. Burbach's letter of August 30.  
Please reply to the part marked for your attention.

K.M.

CRUMPACKER, GEMBERLING & ENSLEN

ATTORNEYS AT LAW

PETER CRUMPACKER (1857-1918)  
FREDERICK C. CRUMPACKER (1881-1948)  
OWEN W. CRUMPACKER  
THEODORE M. GEMBERLING  
LOWELL E. ENSLEN  
GEORGE V. BURBACH  
HAROLD ABRAHAMSON  
THOMAS T. CRUMPACKER

5217 HOHMAN AVENUE  
HAMMOND, INDIANA

300 HAMMOND BUILDING  
TELEPHONE WESTMORE 2-0825

August 30, 1961

Mr. Kenneth McGraw  
Clerk, Bd. of Public Works  
City of Fort Wayne  
City Hall  
Fort Wayne, Indiana

RECEIVED  
AUG 31 1961  
RECEIVED

In re: Storm Water Pumping Station  
Near 3rd Street-City of Fort Wayne

Dear Mr. McGraw:

We represent the New York Central Railroad who are parties in a condemnation proceedings concerning the foregoing sewer facilities near 3rd Street.

Would you be kind enough to furnish me with copies of the resolutions of the Board of Public Works confirming the condemnation proceedings on June 26, 1961, copy of the assessment roll and the resolution adopting the assessment roll on July 19, 1961, and a copy of the confirmatory resolution confirming the assessment roll on August 15, 1961.

In addition to the condemnation of sewer right-of-way, etc., I understand that there is also involved the matter of a service road to service the proposed pumping station. This service road does not appear to be covered by the declaratory resolution 1058, and I wish to inquire as to what the City's plans are as far as the service road itself is concerned. I understand that there has been some discussion between the Engineer's Department of the railroad and various City officials concerning the possibility of the City's entering into a private crossing agreement for this service-road facility. Would you advise me whether or not the City of Fort Wayne is agreeable to entering into a standard form private crossing agreement with the railroad.

Thanking you for your cooperation in this matter, I am

Very truly yours,

*George Burbach*

GVB/cac  
(Dic.)

NOTED  
 P.F.R.  
 J.D.L.  
 B.W.

Re-1058  
Date \_\_\_\_\_

MEMORANDUM

September 8, 1961

Re New York Central Railroad Company  
Fort Wayne and Jackson Railroad Company  
versus  
City of Fort Wayne, Paul F. Roembke,  
John D. Lombard, Berkeley Ward, as Members of the  
Board of Public Works of the City of Fort Wayne  
No. 28263 Allen Circuit Court

Mr. Robert Hines  
Associate City Attorney  
334 Utility Building  
Fort Wayne, Indiana

Dear Bob:

The following is a memorandum as to the law and action taken in the above case:

1. The Sewer Engineering Department determined it was necessary to condemn part of the land at the Southeast corner of Calhoun and Fourth Street (diagram attached) owned by Fort Wayne and Jackson Railroad Company, which is leased under a long term lease to New York Central Railroad Company, in order to construct a new pumping station and connecting sewer and water lines.

The land affected is part of Lot 6 in Wells Reserve, the exact part being specifically described in the Declaratory Resolution which is attached to the complaint.

2. The City Engineering Department attempted to negotiate the purchase of an easement for this ground with the New York Central Railroad but negotiations failed on two points:

a. The Railroad (as confirmed in its letter of August 11, 1961) wanted approximately \$8870 for the grant plus an annual rental of \$200. The Fort Wayne Real Estate Board appraised the land to be taken at \$600. After considerable negotiation, the City finally offered \$3,000.

b. New York Central would only give a terminable easement for the part over their grade crossing and seemed unable to get consent of Fort Wayne and Jackson Railroad Company, the fee owner.

3. On June 5, 1961, the Board of Public Works adopted Declaratory Resolution No. 1058-1961 for the condemnation of a permanent right of way for sewer and utility purposes, together with a temporary right of way adjoining for construction purposes.

This Resolution was filed pursuant to Burns 48-2001 which provides that whenever the Board of Public Works of any City shall desire to condemn for the use of such City any real property or other right of way, it shall adopt a Resolution to that effect, etc.

4. As required by said Section of the Statute, notice was published of the adoption of the Resolution in both newspapers on June 7 and June 14 of a date to file remonstrance on June 26, more than 10 days after the date of the last publication. Notice of the hearing was also mailed to the New York Central Railroad Agent at 129 East Fourth Street, Fort Wayne.

5. On June 26, 1961, New York Central Railroad filed a written Remonstrance to the effect that the Railroad would not benefit from the easement right of way proposed, and that the proposed settlement offer of \$600 was inadequate. No Remonstrance was filed by Fort Wayne and Jackson Railroad Company.

6. On June 26, 1961, the Board of Public Works overruled said Remonstrance, confirmed the adoption of the Resolution, and ordered the preparation of the Assessment Roll of benefits and damages.

7. On July 19, 1961, the Board approved the Roll of benefits and damages, and set the awards for public hearing on August 15, 1961.

8. Pursuant to Burns 48-2003, Notice was published in both newspapers on July 21, July 28, and August 4 of the hearing on the Assessment Roll on August 15, 1961. The Notice was directed to both railroads. A copy of the Notice was mailed July 21 to New York Central Railroad Agent J. H. Kessen at 129 East Fourth Street, Fort Wayne.

9. On August 15, 1961, public hearing was held on the Assessment Roll, Agent Kessen of New York Central Railroad was present, and the Roll was confirmed. The Board awarded damages of \$3,000 to Fort Wayne and Jackson Railroad Company and New York Central Railroad Company (lessee).
10. Thereafter, as alleged in the complaint, the City tendered check of \$3,000 to New York Central Railroad on August 24, 1961, which check was refused.
11. On August 23, 1961, City entered on the right of way and began construction of the sewer main.
12. On August 31, 1961, both New York Central Railroad Company and Fort Wayne and Jackson Railroad Company filed joint complaint in the above Cause praying a trial and hearing de novo and asking that the amount of the damages be redetermined.

The appeal by the Railroads is covered by Burns 48-2005 which provides that any persons remonstrating in writing (before the Board of Works in the condemnation proceedings outlined above) may within 30 days thereafter take an appeal to the Circuit Court. Such appeal shall affect only the assessment or award of the person appealing.

Burns 48-2006 provides that the Court shall rehear the matter of such assessment and may confirm, lower, or increase the same as may seem just.

#### CONCLUSION

1. Since Fort Wayne and Jackson Railroad Company filed no written Remonstrance with the Board of Public Works, it is not a proper party to the appeal.
2. It would appear from the record that the proceedings before the Board of Works were proper and that all notices were given.
3. That the New York Central Railroad has the right,

under Statute, to have the Circuit Court review the assessment of its damages.

It is difficult to see how the sewer easement substantially affects the value of the railroad property, or that the Railroad will be able to produce witnesses sustaining the claim damage of \$8,870 plus \$200 per year.

The damages in question were negotiated by Edward Green, City Engineer, on behalf of the City and we would suggest that you confer with him as to the damages involved.

4. As a matter of legal procedure, might we suggest the filing of a motion to make more specific, requiring the setting out in the complaint of the remonstrances filed by the plaintiffs as alleged in paragraphs 4 and 5, as the filing of such a Remonstrance is a condition precedent to the appeal, and the Fort Wayne and Jackson Railroad filed no such Remonstrance.

The motion to make specific could also be addressed to the allegation that proper notices were not given in paragraph 9 of the complaint, as to what notices are referred to, as our summary search indicates that all proper notices were given.

*John E. Hoffman, Jr.*  
John E. Hoffman, Jr.  
Associate City Attorney

JEH:ms

enc. 4

cc: Edward Green  
Board of Public Works ✓  
Jerome O'Dowd  
Mayor Paul M. Burns

STATE OF INDIANA }  
COUNTY OF ALLEN }  
SS:

FILED CLERK'S OFFICE  
ELMER SMITH, CLERK

IN THE ALLEN CIRCUIT COURT

1961 AUG 21 AM 8:46  
PORT WAYNE, INDIANA

NEW YORK CENTRAL RAILROAD COMPANY,  
a Corporation, and FORT WAYNE AND  
JACKSON RAILROAD COMPANY, a  
Corporation,

Plaintiffs

-vs-

THE CITY OF FORT WAYNE, INDIANA,  
a Municipal Corporation, and  
PAUL F. ROEMER, ~~✓~~ JOHN D. LOMBARD,  
and BERKELEY WARD, as members of  
and constituting the Board of Public  
Works of the City of Fort Wayne,  
Indiana,

Defendants

CAUSE NO.

Aug 28 1963  
RECD  
RUFF'S DEPT.  
CITY, IND.  
CLERK & UNIFORM  
SHERIFF

4 36 PM '61

COMPLAINT OF APPEAL

Come now the plaintiffs and for cause of action against the defendants allege and say:

- (1) Defendant City of Fort Wayne is a municipal corporation existing pursuant to the laws of the State of Indiana. The individually named defendants are members of and constitute the Board of Public Works of the said defendant City of Fort Wayne.
- (2) That on or about June 5, 1961, the said Board of Public Works of the City of Fort Wayne adopted its Declaratory Resolution No. 1058-1961 for the purpose of condemning a permanent right-of-way for sewer and utility purposes across certain parcel of real estate described therein and for the purpose of condemning a temporary right-of-way for construction purposes across a certain parcel of real estate described therein, a copy of which Declaratory Resolution is attached hereto and made a part hereof as Exhibit "A".
- (3) That the plaintiff Fort Wayne & Jackson Railroad Company is the fee owner of a certain parcel of real estate, to-wit: Lot 6, in Wells Reserve situated in the Northeast 1/4 of Section 2, Township 30 North, Range 12 east, in Allen County, Indiana, which said property is injuriously affected by the aforesaid condemnation proceedings.

The plaintiff New York Central Railroad Company is the owner and holder of a leasehold interest in the aforescribed real estate, and is the owner and holder of railroad easements and operating rights which are injuriously affected by the aforescribed condemnation proceedings.

(4) Plaintiffs remonstrated against the aforescribed condemnation proceedings, and on June 26, 1961, said Board of Public Works overruled the said remonstrance and adopted a confirmatory resolution, confirming the aforescribed condemnation.

(5) On or about the 19th day of July, 1961, the said Board of Public Works approved an award of benefits and damages in the aforescribed condemnation proceedings, which said award of benefits and damages was set for public hearing on August 15, 1961. Plaintiffs were awarded by the said award of benefits and damages, as damages to their property and property rights as a result of the aforescribed condemnation proceedings the sum of Three Thousand (\$3,000.00) Dollars. Plaintiffs remonstrated against the amount of said award and on August 15, 1961, said Board of Public Works overruled the said remonstrances and confirmed the award of Three Thousand (\$3,000.00) Dollars to the plaintiffs herein as damages, by reason of the aforescribed condemnation proceedings.

(6) On August 23, 1961, the defendants did enter upon the land of the plaintiffs described herein for the purpose of constructing the sewer described in the said Declaratory Resolution 1058. On August 24, 1961, the defendants did tender to the agent of the plaintiff New York Central Railroad Company a check in the amount of Three Thousand (\$3,000.00) Dollars, which said tender was refused.

(7) That the amount of the award of damages to the plaintiffs herein is inadequate.

(8) That by virtue of the aforescribed condemnation proceedings, the plaintiffs have been damaged in the amount in excess of Ten Thousand (\$10,000.00) Dollars.

(9) That the action of the said Board of Public Works in adopting the aforescribed award of benefits and damages is illegal, null, and void for each of the following reasons:

(a) Proper notice was not given in the manner or form prescribed by law.

(b) Said award was not made in the manner or form prescribed by law.

(10) By virtue of the foregoing facts, the plaintiffs are being deprived of their property without due process of law.

WHEREFORE, the plaintiffs pray an appeal from the said award of assessment and damages and that upon trial and hearing de novo the court determine the amount of damages to the plaintiffs' property and property rights, and for all other just and proper relief in the premises.

Orvin W. Angerer  
John D. Bear  
Attorneys for the plaintiffs

August 25, 1961

Fort Wayne & Jackson Railroad Company  
New York Central Railroad Company, Lessee  
129 East Fourth Street  
Fort Wayne, Indiana

Attention Mr. John Kessen, Freight Agent

Gentlemen:

This will notify you that pursuant to the approval of the final Assessment Roll under Declaratory Resolution 1058-1961, of the Board of Public Works of the City of Fort Wayne, Indiana, said Board of Public Works determined your damages in the condemnation of your land to be \$3,000. Pursuant thereto, the City of Fort Wayne, Indiana, issued its voucher and check in the amount of \$3,000 in payment of the damages so found and on August 24, 1961, Kenneth McGraw, Clerk of the Board of Public Works, called Mr. John Kessen and informed him said check was ready for delivery. Mr. Kessen informed Mr. McGraw that the Legal Department of his company had directed him not to accept the check.

This will further notify you that in accordance with the provisions of the Statutes of the State of Indiana 48-2010, said voucher and check are now in the office of the Board of Public Works of the City of Fort Wayne, Indiana, and are being held for you and are available to you at any time that said offices are open.

Very truly yours,

Paul L. Donaldson  
John L. Donaldson  
Richard L. Donaldson

BOARD OF PUBLIC WORKS

KM:ms

cc: Mayor Burns  
Robert L. Hines  
Edward Green

August 25, 1961

Fort Wayne & Jackson Railroad Company  
New York Central Railroad Company, Lessee  
129 East Fourth Street  
Fort Wayne, Indiana

Attention Mr. John Kessen, Freight Agent

Gentlemen:

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Very truly yours,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
BOARD OF PUBLIC WORKS

KM:ms

cc: Mayor Burns  
Robert L. Hines  
Edward Green

August 22, 1961

Mr. G. Paul Scheele, General Auditor  
Declaratory Res. 1058-1961

NOTED  
 P.F.R.  
 J.D.L.  
 B.W.

On August 15, 1961, the Board finally confirmed the Assessment Roll determining the benefits and damages pursuant with Declaratory Resolution No. 1058-1961, for the condemnation of a permanent right of way for sewer easement and utility purposes and a temporary right of way for construction purposes across parts of Lot 6 in Wells Reserve situated in the Northeast  $\frac{1}{4}$  Section 2, Township 30 North, Range 12 East, all in Allen County, Indiana.

The Board further awarded damages in the sum of \$3,000 to Fort Wayne and Jackson Railroad Company, The New York Central Railroad Company, lessee.

This will authorize you to issue check to the aforesaid property owner for the above mentioned amount. The account to be charged is Sewage Works Construction Account 3-375-156.

*J. L. McGraw*, Clerk

BOARD OF PUBLIC WORKS

KM:ms

cc: Mayor Burns

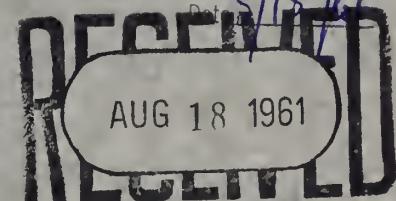
NOTED

P.F.R.

J.D.L.

B.W.

Date 8/18/61



August 17, 1961

Mr. C.E. Defendorf, Chief Engineer  
New York Central System  
LaSalle Street Station  
Chicago 5, Illinois

Dear Sir:

This will acknowledge receipt of your letter dated ~~August 11, 1961~~, your File N-F-37E-FW concerning the proposed installation of a storm water pumping station for sanitary relief system in railroad property near Third Street in the City of Fort Wayne.

Please be advised that this letter contains no information that was not conveyed to me over the telephone by Mr. Buchwalter except for Item C, which concerns the proposed private grade crossing.

The Board of Public Works considered these representations as well as those made by Mr. Redella, and while we recognize that the considerations set out in your letter are those established by the Eastern Presidents Conference Committee of the Railroad Industry, the Board does not consider that they reflect the actual damage to the railroad property. The Board cannot be bound by arbitrary fees but must determine the amount of damages suffered by reason of taking private property for public purposes. Mr. Buchwalter advised me that he had no authority to decrease the fees as established by your company, and while the Board did agree to increase the amount of damages previously considered, pursuant to certain information made available by your representative it is not possible for the Board to agree to the considerations outlined in your letter.

It is also a fact that your company could not deliver a warranty deed nor could it grant a perpetual easement because of the fact that the title to this land is in the Fort Wayne and Jackson Railroad Company.

In view of all the information available to the Board, and in view of the fact that neither Mr. Redella nor Mr. Buchwalter could enter into any negotiations with respect to the established fees, the Board had no choice but to proceed with the appropriation proceedings. The Board established the damages to railroad property at \$3,000.

Our contract requires that the crossing be constructed to the satisfaction

Mr. C.E. Defendorf

-2-

August 17, 1961

of the New York Central System, and the Board does not expect the New York Central System to incur any expenses in connection with this construction. The Board will agree to barricade this crossing since it is not desired that any use be made of it except for access to the pumping station. Such barricade will be constructed at a location and in a manner satisfactory to your company.

The Board will also agree that no watchman service or automatic protection for this crossing will be required from the New York Central System.

Very truly yours,

*Edward Green*

Edward Green  
Chief Engineer, City Utilities

EG:ld

cc: Mayor Paul M. Burns  
Board of Public Works  
Mr. J.R. Redella

RECEIVED  
AUG 18 1961  
RECEIVED

# NEW YORK CENTRAL SYSTEM

C. E. DEFENDORF  
CHIEF ENGINEER  
T. P. CUNNINGHAM  
ASST. CHIEF ENGINEER  
KARL OWARDITS  
ENGINEER GRADE CROSSINGS

LA SALLE STREET STATION  
CHICAGO 5, ILLINOIS

August 11, 1961

File N-7-372-71

Mr. Edward Green  
Chief Engineer, City Utilities  
City of Fort Wayne  
425 So. Calhoun St.  
Fort Wayne, Indiana

Dear Sir:

Reference is made to your letter of June 6, 1961 to Mr. L. F. Sobic of our District Engineer's Office in Cleveland, Ohio, in connection with the proposed installation by the City of Fort Wayne of a storm water pumping station for sanitary relief system, which will involve railroad property near Third Street in the City of Fort Wayne, Ind.

We have been furnished plans and specifications of the project by Consoer, Townsend and Associates, Consulting Engineers, involving railroad property, and would advise as follows:

Inasmuch as the sewer and water lines will occupy railroad owned property, we will require that the City enter into our standard form of revocable or non-revocable agreement, including fee and rental in accordance with schedule or a lump sum consideration, as follows:

- (a) We would be agreeable to grant of standard form of non-revocable agreement for the sewer and water line occupations and crossings as indicated on sheet 3 of 24 of above referred to plans for a lump sum consideration of \$6,820.,
- (b) In accordance with negotiations and discussions with our Real Estate Department, the Railroad quotes a price of \$2,000 for the property required for the pumping station.
- (c) We would require the City to enter into a separate form of revocable agreement for the proposed private grade crossing of railroad right-of-way and tracks, including a preparation fee of \$50 and an annual rental of \$200.
- (d) We would also expect the City to reimburse the Railroad Company for all expense incurred by the Railroad Company in connection with the sewer and water line installations, and the City to assume all expense incurred by the railroad in the construction, repair, maintenance, use and removal of the proposed private grade crossing. We would also expect to be relieved of the cost of providing watchman service or automatic protection at the private grade crossing.

# NEW YORK CENTRAL SYSTEM

2.

Mr. Edward Green

August 11, 1961

(e) We should also be assured that no obstruction will be placed within 18 feet of our tracks.

We have also suggested to you the possibility of relocating the 84" sewer from our property and installing same in Calhoun Street, together with one intersecting chamber, which would reduce the occupancy of railroad property. If this method were possible, Item (a) in the above would amount to \$2500.00.

We would be glad to hear further from you as to your wishes in connection with said project.

Yours very truly,

*C. E. Deendorf.*  
Chief Engineer.

cc: Mr. R. D. Timpany  
Mr. R. O. Olson  
Mr. B. L. Strohl  
Mr. R. F. Lawson  
Mr. J. M. Kirkpatrick  
Mr. R. J. Hardenbergh

# NEW YORK CENTRAL SYSTEM

J. M. KIRKPATRICK  
REAL ESTATE MANAGER

114 WEST CONCOURSE  
CLEVELAND UNION TERMINAL  
50 PUBLIC SQUARE  
CLEVELAND 13, OHIO

June 28, 1961  
File: 451-1-4

Mr. Edward Green  
Chief Engineer  
City Utilities  
Board of Public Works  
City of Ft. Wayne  
Ft. Wayne, Indiana

Dear Sir:

Referring to your recent telephone conversation with Mr. Redella of my office concerning the official appraisal secured by the City from the Ft. Wayne Board of Realtors in the amount of \$600 for the parcel of land which you propose to acquire for a storm water pumping station on the property of my Company at the foot of 3rd Street in accordance with Declaratory Resolution 1058-1961, passed June 5, 1961, by the Board of Public Works.

As you know, it is our intention to cooperate with the Board of Public Works in progressing this matter as quickly as possible; however, a quick review of the plans and instruments submitted by you indicates the following discrepancies:

1. A comparison of the plan attached to Declaratory Resolution 1058 and Sheet 3 of 24 of the plans prepared by Consoer, Townsend & Associates shows a discrepancy of the angle in the easterly line of North Calhoun Street, northerly of 3rd Street.
2. Assuming that the southeasterly line of North Calhoun Street is correct on Sheet 3 of 24, if the description appearing in the Resolution is plotted on this sheet, the most westerly corner of the pumping station site will be approximately 4 feet from the center line of the nearest track which is insufficient for proper legal clearance. You will also note that the description distance of 62 feet along a northerly line of the parcel extending across the tracks scales about 47 feet.
3. The beginning point described in the description of the appraisal certificate is not consistent with the description appearing in the Resolution.

# NEW YORK CENTRAL SYSTEM

-2-

J. M. KIRKPATRICK  
REAL ESTATE MANAGER

114 WEST CONCOURSE  
CLEVELAND UNION TERMINAL  
50 PUBLIC SQUARE  
CLEVELAND 13, OHIO

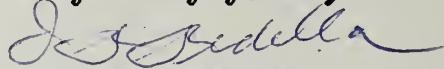
4. In your letter of June 6 to Mr. L. F. Sepic you indicated that it is expected the cost of construction of this project will be defrayed from the revenue bond issue with no assessment against any of the benefited property owners, but the Notice of June 13, states that the property of the Railroad Company is subject to assessment for the improvement.

As soon as you can clarify these discrepancies we shall be pleased to progress the matter expeditiously through our organization for approval.

Assuming that the proposed improvement will not require the relocation of any existing railroad facilities, I consider the appraisal of \$600 submitted by you as being inadequate compensation for the area of the pumping station site. A review of our existing leases in the immediate area indicates that the capitalization of such rentals produces a value of \$2750 for the area of 11,050 square feet required by the City.

As to the proposed easement for the construction of the sewer, the private crossing and the water line, I note that in your letter of June 6 to Mr. Sepic you suggested a lump sum consideration of \$1130 as consideration for the non-terminable easement, determined by capitalizing an annual rental of \$108 at 10% plus \$50 for the preparation of the papers, or a total of \$1130. As our Chief Engineer is responsible for the preparation of instruments for such crossings and as he determines the rentals and lump sum consideration for such rights by capitalizing the annual rental at 5%, I am requesting him to furnish me the consideration applicable to the rights for the crossings. As soon as this information is received I shall be glad to get in touch with you for the purpose of negotiating a final settlement.

Very truly yours,



J. R. Redella  
Real Estate Agent

JRR/dg

OFFICE OF  
BOARD OF PUBLIC WORKS



FORT WAYNE 2, INDIANA

43-119-11

B. O. 84-161

Date June 26, 1961

To City Engineer

Subject Declaratory Res. 1058-1961 NYC Railroad

Prepare Assessment Roll of Benefits and Damages, in accordance with the findings of the Board.

Paul F. Roembke  
John D. Lombard  
Berkeley Ward  
BOARD OF PUBLIC WORKS

ic  
attach Res. & P. O. List  
cc: Mayor Burns

Signed

Reply:

July 18, 1961

Assessment Roll of Benefits and Damages completed and attached.

*Edward Green*  
Edward Green,  
City Engineer  
DEB/is  
attachs.

RECEIVED  
JUL 19 1961

Signed

SENDER: REMOVE & KEEP 3RD COPY - RECEIVER: ANSWER & KEEP 2ND COPY - RETURN 1ST COPY

NOTED

- P.F.R.
- J.D.L.
- B.W.

Date \_\_\_\_\_

June 30, 1961

JOHN E. HOFFMAN, JR.  
ASSOCIATE CITY ATTORNEY

I am attaching two copies each of the following documents:

GRANT OF EASEMENT FOR UTILITIES PURPOSES by  
Francille M. Henkenius

GRANT OF EASEMENT FOR UTILITIES PURPOSES from  
Vernon G. (Deceased) and Emma H. Piepenbrink

Legal Description and Plat of Land required for the  
Installation of a pumping station on Brown Street

The second above named easement carries a consideration of \$500.00.  
The legal description is for land to be acquired from Francille M.  
Henkenius for a consideration of \$1975.00.

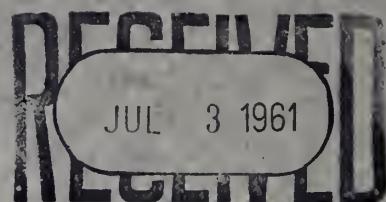
Will you please examine these forms as to legality, prepare a purchase  
agreement with Francille M. Henkenius and arrange for execution of all  
documents. The Board of Public Works has approved in general the  
arrangements formalized by these papers, and I assume that you will  
arrange for the issuance of the necessary checks at the proper time.

*Edward Green*  
Edward Green  
Chief Engineer, City Utilities

EG:ld  
attachs.

cc: Mayor Burns  
Board of Public Works

P.S. We have agreed with the attorney for the Grantors that the City  
will assume all legal expense and will only require that the abstracts  
be presented to the City Attorney for examination.



NOTED

- P.F.R.
- J.D.L.
- B.W.

Date \_\_\_\_\_

NOTED

P.F.R.  
 J.D.L.  
 B.W.

Date July 10, 1961

July 3, 1961

Mr. J. Robert Arnold  
Attorney at Law  
1120 Lincoln Bank Tower  
Fort Wayne, Indiana

Dear Mr. Arnold:

This has reference to our conversations concerning the easement which we require from your clients, Miguel and Francille M. Torres, for the construction of a sanitary relief sewer in the boundary line of your clients' property just north of Hale Avenue.

This will confirm our conversation in which I advised you that the Board of Public Works will agree to the following conditions in order to obtain this easement:

The Grant of Easement will be limited to the construction, use, operation and maintenance of an 18-inch sewer and its appurtenances instead of a broad grant for utility purposes originally proposed.

The work will be done in such a manner as to prevent any damage to the structures outside of the easement. The trench will be protected by driving sheet piling as necessary, which sheet piling will be left in place to prevent settlement which might possibly damage the foundations of adjacent structures.

The Board will require that its contractor, agents or employees will repair any damage caused to the structures or facilities within the easement. Walks, driveways, steps etc. will be replaced if damaged, and the Board will maintain the driveway within the easement for a period of 2 years after the work is completed. The Board's photographer will take photographs of all structures and facilities and you and/or your clients will be furnished copies of them.

I trust that this information will enable your client to agree to this Grant of Easement so that we may proceed without delay.

Very truly yours,

*Edward Green*  
Edward Green  
Chief Engineer, City Utilities  
EG:ld  
cc: Mayor Paul M. Burns  
Board of Public Works

**NOTED**

P.F.R.  
 J.D.L.  
 B.W.

Date \_\_\_\_\_

July 3, 1961

Det. 1058

Mr. Oliver H. Eggers  
Attorney at Law  
507 Strauss Building  
Fort Wayne, Indiana

Dear Mr. Eggers:

This has reference to our conversations concerning the easement which we require from your client, Nellie F. Homeyer, for the ~~construction~~ of a sanitary relief sewer in the boundary line of your client's property just north of Hale Avenue.

This will confirm our conversation in which I advised you that the Board of Public Works will agree to the following conditions in order to obtain this easement:

The Grant of Easement will be limited to the construction, use, operation and maintenance of an 18-inch sewer and its appurtenances instead of a broad grant for utility purposes originally proposed.

The work will be done in such a manner as to prevent any damage to the structures outside of the easement. The trench will be protected by driving sheet piling as necessary, which sheet piling will be left in place to prevent settlement which might possibly damage the foundations of adjacent structures.

The Board will require that its contractor, agents or employees will repair any damage caused to the structures or facilities within the easement. Walks, driveways, steps etc. will be replaced if damaged, and the Board will maintain the driveway within the easement for a period of 2 years after the work is completed. The Board's photographer will take photographs of all structures and facilities and you and/or your client will be furnished copies of them.

I trust that this information will enable your client to agree to this Grant of Easement so that we may proceed without delay.

Very truly yours,

*Edward Green*  
Edward Green  
Chief Engineer, City Utilities  
EG:ld  
cc: Mayor Paul M. Burns  
Board of Public Works ✓

July 7, 1961

Mr. Ed. Green  
City Engineer  
425 S. Calhoun Street  
Fort Wayne, Indiana

Dear Mr. Green:

Re: Sewer Line Crossings under the land of  
New York Central System, and under its  
tracks in the vicinity of Third and  
Calhoun Streets.

This is to confirm our telephone conversation of July 7, 1961, to the effect that the city should continue with the condemnation action now pending before the Board of Public Works to acquire the necessary land and easement rights for the construction of the above proposed permanent facilities.

The submitted New York Central Agreement would not be satisfactory because in Article 7 it provides that the Railroad can terminate the rights of the city in the sewer crossing etc., by giving 30 days written notice.

Article 6 of the Agreement further provides that the city would have to indemnify the Railroad against any claims arising out of the sewer lines etc., even though caused or contributed to by the negligence of the Railroad or its employees.

Further we understand that such a terminable Agreement would cost approximately the same as a permanently condemned right of way.

Very truly yours,

John E. Hoffman  
John E. Hoffman  
Associate City Attorney

JEH:ic

cc: Mayor Burns

Board of Public Works ✓

FORT WAYNE, INDIANA, JULY 7, 1961

RESOLUTION 1058-1961

NUN PRO TUNC ENTRY BY BOARD OF PUBLIC WORKS  
CORRECTING DESCRIPTION IN RESOLUTION

Comes now Patrick Sidney-Smith, Chief Sewer Engineer, and shows to the Board that through a scrivener's error a mistake was made in the tenth and thirteenth lines of the description of the permanent right of way to be condemned in the above Resolution, which was adopted by this Board of June 5, 1961 and confirmed June 26, 1961. That the tenth line of the permanent right of way should read

" thence North 35 degrees 22 minutes East 59 feet to a point "

instead of

" thence North 35 degrees 22 minutes 30 seconds East 59 feet  
to a point "

and the thirteenth line of the permanent right of way should read

" West 19 feet to a point; thence North 57 degrees 00 minutes  
West 47.60 "

instead of

" West 19 feet to a point; thence North 57 degrees 00 minutes  
West 62 "

And the Board being duly advised finds that said descriptions should be corrected accordingly, and the Board now corrects and amends by interlineation the tenth and thirteenth lines of the description for the permanent right of way nun pro tunc as of the date of the adoption of said Resolution on June 5, 1961, and the confirmation on June 26, 1961, accordingly.

Copy of this sent to Mr. 7/6

attach to Res. when it is  
returned to C.E.

NEW YORK'S CENTRAL SYSTEM

March 17, 1956  
FILE # 231-43 15-68

Cleveland Printing and Supply, Inc.  
2000 Monroe, Cleveland

For and in consideration of the sum of \$1.00, the receipt whereof  
I, Harry Ackerman, do hereby grant and release to Bill  
W. H. Morris the law grand of the property immediately  
next to the above described to Isaac Gated Division #2, 1944,  
at Fort Wayne, Indiana, upon the following terms and conditions:

to be understood and agreed that your Corporation shall use said premises in a careful and safe manner and maintain the same in an orderly condition so as consistent with the use thereof as herein permitted, and as are not to interfere in any way with the maintenance and operation of the Railroad Company's railroad and appurtenant facilities and without causing damage or injury to other property of the Railroad Company, tenants upon the adjoining lands. You further agree to maintain said so as not to interfere with or obstruct any drainage ditches, creek beds or other facilities of the Railroad Company along or adjacent to the foot of the embankment supporting its right of way, timbered and banks adjoining said premises.

You further agree not to deposit or place waste material upon said premises above the general elevation of the existing ground surface in the vicinity of said premises, and no rubbish or combustible material shall be deposited thereon. All material deposited shall be leveled off to a uniform grade, and all work done upon the premises shall be performed under the supervision and to the satisfaction of the Railroad Company's Chief Engineer or his duly authorized representative. The Railroad Company reserves the right to enter upon said premises at any time for the purpose of inspection.

You shall, at your sole cost and expense, procure all necessary permits and comply with and obey all ordinances, rules, regulations, requirements and laws of all Federal, State, County and Municipal authorities and the various departments thereof, so far as the same may affect your use of the above described premises.

This permit shall continue in force for the period of one month, beginning \_\_\_\_\_, and from month to month thereafter until terminated by either party hereto giving to the other not less than 15 days' notice in writing.

Note

# NEW YORK CENTRAL SYSTEM

1400-1400-1400

March 15, 1956  
File 231-61 Jfr. 4

CIVILIAN BUILDING AND SUPPLY, INC.

It is expressly understood and agreed that you shall indemnify, defend, if requested, and save harmless the Railroad Company, its successors and assigns, from and against any and all detriment, damages, losses, claims, demands, suits, costs or expenses (including expenses incident to investigation and litigation) which the Railroad Company may suffer, sustain or be subject to, directly or indirectly, caused by or in any manner arising out of or in connection with the permission herein granted, regardless of any negligence in connection therewith on the part of the Railroad Company, its agents, employees, and servants.

This letter is written in duplicate. If you desire to use said premises subject to the foregoing terms and conditions, will you please indicate your acceptance by signing both copies on the line marked "Accepted" in the lower left-hand corner hereof, fill in the date, and return one copy to me for my file.

THE NEW YORK CENTRAL RAILROAD COMPANY

1000-1977

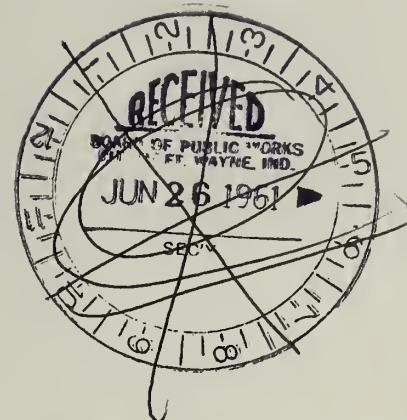
## **GIVELLS BUILDING AND SUPPLY, INC.**

DATA

Don't let the world's best technology be your best-kept secret.



Board of Public Works  
City of Fort Wayne  
Fort Wayne, Indiana



REMONSTRANCE

The New York Central Railroad Company, a corporation, hereby files its remonstrance to Declaratory Resolution No. 1058-1961, adopted by your Board on June 5, 1961, calling for condemnation of certain land for a permanent right of way for sewer easement and utility purposes and a temporary right of way for construction purposes. The reasons for such remonstrance are as follows:

1. The proposed improvements will be of no special benefit to the property of New York Central.
2. The proposed award of damages in the amount of \$600.00 for condemnation of land owned by New York Central and in the amount of \$1130.00 for a sewer and roadway crossing of tracks owned by New York Central is insufficient.

Dated this 26th day of June, 1961.

THE NEW YORK CENTRAL RAILROAD COMPANY

By J. H. Kessen  
J. H. Kessen, Agent  
129 East Fourth Street  
Fort Wayne, Indiana

# REMONSTRANCE

Fort Wayne, Ind.,

**To the Board of Public Works of the City of Fort Wayne:**

Gentlemen:

The undersigned, owners of real estate respectfully remonstrate against the passage of a resolution providing for the

**NOTE: In case of joint deeds both husbands and wives must sign with their respective legal signatures.**

NAME

ADDRESS



Remonstrance  
Against Passage

of a Resolution for

from \_\_\_\_\_

to \_\_\_\_\_

Filed with the Board of Public Works

0 84

June 2, 1961

Mr. L.F. Sepic  
Office Engineer  
New York Central System  
West Third Street and St. Clair  
Cleveland, Ohio

Dear Sir:

First, I want to thank you for the time and attention you devoted to finding solutions for the problems which arise in connection with the construction of a storm water pumping station for our sanitary relief system on your property near Third Street in Fort Wayne, Indiana.

I discussed our conclusions with the Board of Public Works and the Mayor this morning, and it appears that we must begin formal condemnation proceedings immediately if we are to assure ourselves of the necessary rights for the construction of this public station beginning August 15. I am attaching a copy for both you and Mr. Redella of our Declaratory Resolution which will be adopted by the Board of Public Works probably Monday, June 5.

I assure you that this is a friendly proceeding and that if we can find other means to accomplish the necessary results, action will be rescinded on this resolution without delay.

As you know, we will, before the resolution is finally completed, have a formal appraisal made by an impartial appraisal committee of the Fort Wayne Board of Realtors. A public hearing will be subsequently held at which time the New York Central System may present any objections or suggestions for consideration by the Board of Public Works.

I discovered this morning that because of the fact that the Fort Wayne and Jackson Railroad, which company holds title to this land, is an out of state corporation we will require a little longer period for advertising than would be the case if the New York Central System were the title holders in fact.

Mr. L.F. Sepic

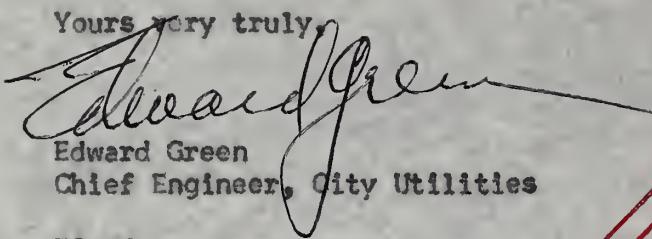
-2-

June 2, 1961

I will address you another letter Monday setting forth all of the information concerning the necessity for the acquisition of this real estate and the need for haste, as we agreed in your office yesterday. I also expect to have formal appraisal for this property by the end of next week.

If you have any questions concerning this resolution, please do not hesitate to call me.

Yours very truly,

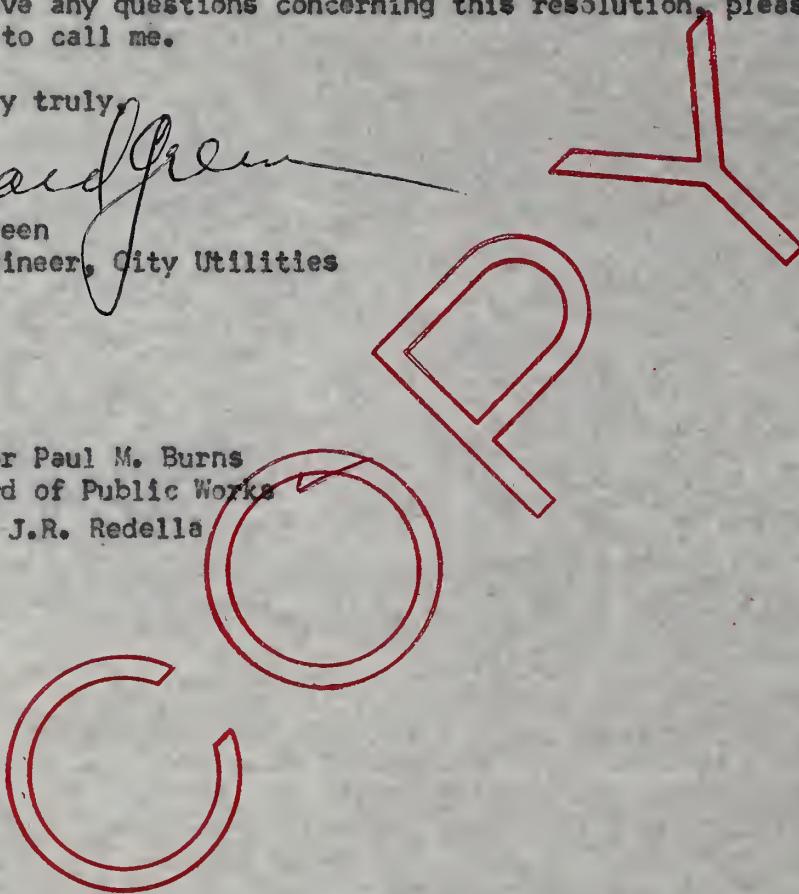


Edward Green  
Chief Engineer, City Utilities

EG:ld

encl.

cc: Mayor Paul M. Burns  
Board of Public Works  
Mr. J.R. Redella



# NOTICE OF IMPROVEMENT

## OFFICE BOARD OF PUBLIC WORKS

Fort Wayne, Indiana, ..... **June 13, 1961**

**1058**

To.....

You are hereby notified that the Board of Public Works, of the City of Fort Wayne, Indiana, did  
pass Improvement Resolution No. **1058-1961** providing for the **Condemnation of a permanent right of way for sewer easement and utility purposes and a temporary right of way for construction purposes across parts of Lot No. 6, in Wells Reserve situated in the northeast  $\frac{1}{4}$  Section 2, Township 30 North, Range 12 east, all in Allen County, Indiana.**

All work to be done under aforementioned Improvement Resolution shall be in accordance with the detailed plans, profile and specifications which are now on file and may be seen in the office of the Board of Public Works.

The Board has fixed..... **Monday, June 26, 1961 at 10:00 a.m.** a date and time when they will hear and consider objections or remonstrances from all persons whose property will be affected by the proposed improvement.

You are hereby notified that

is subject to assessment for said proposed improvement under the Improvement Laws passed by the General Assembly of the State of Indiana, March 6, 1905, and under all acts amendatory thereto and supplemental thereof.

**BOARD OF PUBLIC WORKS**

NOTICE TO NON-ASSessORS

Dear Sirs: We are Jackson Railroad Company - The New York Central Railroad Company (lessee) & New York Central Freight Agent, 100 E. Fourth Street, Fort Wayne, Indiana; P. O. Box 4, in White Pines Reserve, R.R. 3, Section 4, Township 40, Section 12, Indiana.

At the instance of the Indiana Railroad No. 1079-1961 - The Concession of a permanent right of way for water main and utility purposes in connection with Bay, Brown, Hale Street authorized by an Act of the General Assembly of the State of Indiana, approved March 6, 1905, entitled "An Act Concerning Municipal Corporations," and the provisions of all Acts Amending the same and supplemental thereto.

The Board of Public Works has fixed Tuesday, August 18, 1964 at 10:00 a.m., as the date and time when the Board will meet for the purpose of hearing any or such remonstrances which you may desire to present in regard to the amount of Benefits and Damages as aforesaid for the purpose of taking action thereon.

PAUL T. BOSHEKE  
JOHN D. LOMBARD  
CHARLES E. WARD  
BOARD OF PUBLIC WORKS

ATTORNEY: Kenneth McGuire, Clerk

NOTIFICATION: July 21, 28 & August 4, 1964.

## DECLARATORY

## Improvement Resolution No. 058-196 For The Condemnation Of A Permanent Right Of Way For Sewer

EASEMENT AND UTILITY PURPOSES AND A TEMPORARY RIGHT OF WAY FOR CONSTRUCTION PURPOSES ACROSS PARTS OF LOT #6 IN

WELLS RESERVE SITUATED IN THE NORTHEAST 1/4 SECTION 2, TOWNSHIP 30 NORTH, RANGE 12 EAST, ALL IN ALLEN COUNTY, INDIANA

OWNER'S NAME	ADDRESS	R. P. O.	NUMBER OF			DESCRIPTION
			LOT	BLOCK	O. L.	
1 New York Central Railroad	2 C. P. New York Central Agent 129 E. 42d St., New York					PART LOT #6, WELLS RESERVE IN N.E. 1/4 SEC. 2-30-12 E.
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59	NOTICES MAILED OR SERVED					
60	June 13, 1961					
61	By <u>Burgell Elling</u>					
62						
63	N. to P.O.					
64						
65						
			TOTAL			

